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Attorneys for Interstate Battery System of America, Inc., and

Interstate Battery System International, Inc.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

DENO MILANO, on behalf of himself and all  
others similarly situated,

Plaintiff,

vs.

INTERSTATE BATTERY SYSTEM OF  
AMERICA, INC.; INTERSTATE BATTERY  
SYSTEM INTERNATIONAL, INC.,

Defendants.

Case No. CV 10–2125-CW

**STIPULATION REGARDING  
APPOINTMENT OF INTERIM CLASS  
COUNSEL UNDER FED. R. CIV. P 23(g),  
AND ~~PROPOSED~~ ORDER**

1 Plaintiff Deno Milano ("Plaintiff") and Defendants Interstate Battery System of America, Inc.  
2 and Interstate Battery System International, Inc. (collectively "Defendants") by and through the  
3 undersigned attorneys hereby agree and stipulate as follows:

4 Whereas Fed. R. Civ. P. 23(g)(3) states that the "court may designate interim counsel to act on  
5 behalf of a putative class before determining whether to certify the action as a class action;"

6 Whereas counsel for Plaintiff and counsel for Defendants have established a professional  
7 working relationship that they anticipate will be conducive to effective and efficient management of this  
8 case;

9 Whereas counsel for Plaintiff and counsel for Defendants seek to avoid any uncertainty or  
10 confusion regarding whether Plaintiff's counsel is authorized to speak for the putative class;

11 Whereas counsel for Plaintiff seeks appointment as interim counsel because it will formally  
12 empower Girard Gibbs LLP to make the necessary decisions on behalf of the putative class;

13 Whereas Defendants do not oppose designation at this time of Girard Gibbs LLP to serve as  
14 interim counsel to act on behalf of the putative class, while expressly reserving their right to oppose  
15 class certification or appointment of Girard Gibbs LLP as regular class counsel on any grounds,  
16 including adequacy of representation under Fed. R. Civ. P 23(a) and (g).

17 Whereas Plaintiff submits with this stipulation the Declaration of Eric H. Gibbs to provide the  
18 court with a foundation for making the determination that Girard Gibbs LLP will adequately serve as  
19 interim counsel on behalf of the putative Class (the declaration being submitted only by Plaintiff, with  
20 Defendants reserving the right to contest the declaration's assertions at a future date);

21 **IT IS HEREBY STIPULATED AND AGREED**, by and through the undersigned attorneys for  
22 the parties, subject to the Court's approval, that:

23 Pursuant to Fed. R. Civ. P 23(g)(2), the Court may appoint the law firm of Girard Gibbs LLP as  
24 Interim Lead Class Counsel to act on behalf of the putative class in this case and in any additional  
25 actions that might be consolidated with this case.

26 Consistent with the *Manual for Complex Litigation, Fourth* (2004), Federal Judicial Center, ¶¶  
27 10.221 and 40.22, Interim Lead Class Counsel will be generally responsible for the overall conduct of  
28 the litigation on behalf of the putative class and will have the following specific responsibilities:

1           1.       To determine and present (in briefs, oral argument, or such other fashion as may be  
2 appropriate, personally or by a designee) to the court and opposing parties the position of Plaintiff and  
3 the putative class on all matters arising during pretrial proceedings;

4           2.       To coordinate the initiation and conduct of discovery on behalf of Plaintiff and the  
5 putative class, consistent with the requirements of Fed. R. Civ. P. 26(b)(1), 26(b)(2), and 26(g),  
6 including the preparation of joint interrogatories and requests for the production of documents and the  
7 examination of witnesses in depositions;

8           3.       To conduct settlement negotiations on behalf of Plaintiff and the putative class and,  
9 where appropriate, to present any proposed settlements to the Court on behalf of the putative class;

10          4.       To delegate specific tasks to other counsel or committees of counsel, as authorized by the  
11 Court, in a manner designed to ensure that pretrial preparation for Plaintiff and the putative class is  
12 conducted efficiently and effectively;

13          5.       To enter into stipulations with opposing counsel as necessary for the conduct of the  
14 litigation;

15          6.       To prepare and distribute status reports to any other law firms that might seek to  
16 represent the putative class;

17          7.       To maintain adequate time and disbursement records covering services as Interim Lead  
18 Counsel;

19          8.       To monitor the activities of any other law firms that might seek to represent the putative  
20 class to ensure that schedules are met and unnecessary expenditures of time and funds are avoided; and

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2 9. To perform such other duties as may be incidental to the proper prosecution and  
3 coordination of pretrial activities on behalf of Plaintiff and the putative class or authorized by further  
4 order of this court.  
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6 **IT IS SO STIPULATED**  
7

8 DATED: September 23, 2010  
9

**GIRARD GIBBS LLP**

10  
11 By: 

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17 Attorneys for Individual and Representative  
18 Plaintiff Deno Milano

19 DATED: September 23, 2010  
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26 Attorneys for Interstate Battery System of America, Inc.,  
27 and Interstate Battery System International, Inc.  
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**ORDER**

The Court has considered the above stipulation and the related Declaration of Eric H. Gibbs. Pursuant to Fed. R. Civ. P 23(g)(2), the Court finds that the law firm of Girard Gibbs LLP will adequately represent the interests of the Class in pre-class certification proceedings and appoints Girard Gibbs LLP as Interim Lead Class Counsel to act on behalf of the putative class in this case and in any additional actions that might be consolidated with this case. The responsibilities of Girard Gibbs LLP as Interim Lead Class Counsel are as set forth in the above stipulation.

This order is without prejudice to the rights of Defendants to oppose class certification or appointment of Girard Gibbs LLP as regular class counsel on any grounds, including adequacy of representation under Fed. R. Civ. P 23(a) and (g).

Date: 9/29/2010

  
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Judge Claudia Wilken